

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

UNITED STATES OF AMERICA,

CR-13-53-GF-BMM-01

Plaintiff,

vs.

**FINDINGS AND
RECOMMENDATIONS TO
REVOKE DEFENDANT'S
SUPERVISED RELEASE**

JESS JAMES RUTHERFORD, JR.,

Defendant.

I. Synopsis

Mr. Rutherford was accused of violating his conditions of supervised release by failing to: (1) participate in and complete a program of substance abuse treatment; (2) abstain from the use of any controlled substance; and (3) abstain from the consumption of alcohol. He admitted to the violations. Mr. Rutherford's supervised release should be revoked. He should be placed in custody for 3 months, with 24 months of supervised release to follow. The term of supervised release should include six months in a residential re-entry center.

II. Status

On August 12, 2013, United States Chief District Judge Dana Christensen accepted Mr. Rutherford's plea of guilty to the offense of Assault Resulting in Serious Bodily Injury. Doc. 24. Mr. Rutherford was sentenced to 24 months of incarceration, with 3 years of supervised release to follow. Doc. 29. Mr. Rutherford's current term of supervised release began on January 16, 2015. Doc. 33.

Petition

On May 11, 2015, the United States Probation Office filed a petition asking the Court to revoke Mr. Rutherford's supervised release. In the petition, the Probation Office accused Mr. Rutherford of violating Special Condition 2 of his supervised release by failing to participate in and complete a program of substance abuse treatment. The Probation Office also accused Mr. Rutherford of violating Standard Condition 7 of his supervised release by failing to refrain from the use of controlled substances. The Probation Office alleged Mr. Rutherford violated Special Condition 4 of his supervised release by failing to abstain from the consumption of alcohol. Doc. 33. Based on the petition, United States District Judge Brian Morris issued a warrant for Mr. Rutherford's arrest. Doc. 34.

Initial appearance

Mr. Rutherford appeared before the undersigned on May 11, 2015, in Great

Falls, Montana. Federal Defender David Ness accompanied him at the initial appearance. Assistant United States Attorney Jessica Betley represented the United States.

Mr. Rutherford said he had read the petition and understood the allegations. Mr. Rutherford waived the preliminary hearing, and the parties consented to proceed with the revocation hearing before the undersigned.

Revocation hearing

On May 11, 2015, Mr. Rutherford appeared with Mr. Ness before the undersigned for a revocation hearing. Ms. Betley appeared on behalf of the United States.

Mr. Rutherford admitted that he violated the conditions of his supervised release. The violations are serious and warrant revocation of Mr. Rutherford's supervised release.

Mr. Rutherford's violation grade is Grade C, his criminal history category is I, and his underlying offense is a Class C felony. He could be incarcerated for up to 24 months. He could be ordered to remain on supervised release for 36 months, less any custody time imposed. The United States Sentencing Guidelines call for three to nine months in custody.

Both parties recommended the Court sentence Mr. Rutherford to 3 months of custody, with 24 months of supervised release to follow. The parties also

recommended the Court add a condition that Mr. Rutherford spend 180 days in a residential re-entry center. Mr. Rutherford addressed the Court and said he agreed with the parties' recommendation.

III. Analysis

Mr. Rutherford's supervised release should be revoked because he admitted violating its conditions. Mr. Rutherford should be sentenced to 3 months of incarceration, with 24 months of supervised release to follow. This sentence would be sufficient given the seriousness of the violations but not greater than necessary. The conditions previously imposed should be continued. Mr. Rutherford should be required to reside in a re-entry center for six months upon his discharge from incarceration.

IV. Conclusion

Mr. Rutherford was advised that the above sentence would be recommended to Judge Morris. The Court reminded him of his right to object to these Findings and Recommendations within 14 days of their issuance. The undersigned explained that Judge Morris would consider Mr. Rutherford's objection, if it is filed within the allotted time, before making a final determination on whether to revoke Mr. Rutherford's supervised release and what, if any, sanction to impose. The Court **FINDS:**

1. Jess James Rutherford, Jr., violated Special Condition 2 of his

supervised release by failing to appear for his chemical dependency treatment appointment on May 6, 2015.

2. Jess James Rutherford, Jr., violated Standard Condition 7 of his supervised release by failing to refrain from the use of controlled substances on May 3, 4, and 5, 2015.
3. Jess James Rutherford, Jr., violated Special Condition 4 of his supervised release by failing to abstain from the consumption of alcohol on May 3, 4, and 5, 2015.

The Court **RECOMMENDS:**

The District Court should enter the attached Judgment, revoking Mr. Rutherford's supervised release and committing Mr. Rutherford to the custody of the United States Bureau of Prisons for 3 months, with 24 months of supervised release to follow. Mr. Rutherford should be placed in a residential re-entry center for six months following his release from custody

**NOTICE OF RIGHT TO OBJECT TO FINDINGS AND
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO
OBJECT**

The parties may serve and file written objections to the Findings and Recommendations within 14 days of their entry, as indicated on the Notice of Electronic Filing. 28 U.S.C. § 636(b)(1). A district judge will make a de novo determination regarding any portion of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district judge, and may waive

the right to appear and allocute before a district judge.

Dated the 13th day of May, 2015.



John Johnston
United States Magistrate Judge